S.B. Civil Revision Petition No.359/2000
LRs of Nathu Ram & Anr.
Vs
LRs of Mafatlal

DATE OF ORDER : - 8.8.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr.HR Soni, for the petitioner.
Mr.Pradeep Shah, for the respondents.

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Heard learned counsel for the parties.

The present revision petition has been filed against the order of the first appellate court dated 9th May, 2000 and against the order of the trial court dated 29th July, 1997 as the appellate court upheld the trial court's order.

The only question involved in this revision petition is whether the two courts below have committed serious error of law by misreading the diary of the learned counsel while holding that there is interpolation in the case diary of learned counsel for the plaintiff. Learned counsel for the plaintiff has shown original diary to this Court.

It appears that according to learned counsel for the plaintiff, the

trial court fixed the date in the case as 28th March, 1997 and this date was taken by the learned counsel for the plaintiff in view of the fact that learned counsel's son was suffering with some problem and, therefore, date was fixed for operation of the plaintiff's son. On 28th March, 1997, learned counsel for the plaintiff was not in position to attend the court, therefore, he instructed other advocate to take time from the trial court, but when brief holder of the learned counsel for the plaintiff inquired from the court, he found that suit of the plaintiff was dismissed on 28.2.1997. Therefore, an application under Order 9 Rule 9 CPC was submitted by the plaintiffs. The plaintiffs' counsel submitted copy of the diary and a letter which was issued by the Bombay Hospital and other documents to show that there was sufficient cause for non-appearance of the plaintiffs' counsel on 28.2.1997. The trial court observed that there appears to be some interpolation in the diary of the learned advocate and thereafter, the trial court dismissed the plaintiffs' application filed under Order 9 Rule 9 CPC. The plaintiffs preferred appeal. The appeal was dismissed by the appellate court. Hence, this revision petition has been filed by the petitioner as application under Order 9 Rule 9 CPC has been dismissed.

I looked into the original diary of learned counsel for the plaintiff and found that two courts below committed serious error of law in reading the diary of learned counsel for the plaintiff. I found from the

diary of the learned counsel for the plaintiff that date recorded by learned counsel for the plaintiff as next date is 28th March, 1997 and there is no over writing or interpolation in recording the date 28th March, 1997. Not only this the corresponding entry on the date 28th March, 1997 is also very much there. There is no entry in the diary on page of the date 28th Feb., 1997. Apart from it, looking to the totality of the facts of the case there appears to be no fault of the plaintiffs and, therefore, they cannot be punished for any default for attending the court by the their counsel.

In view of the fact that learned counsel himself very specifically admitted that the suit was dismissed because of his fault and this Court after perusal of the learned counsel's diary is of the opinion that there was no fault of the advocate.

Therefore, the revision petition deserves to be allowed, hence, allowed. The order of the appellate court dated 9th May, 2000 and the trial court dated 29th July, 1997 are set aside. The Civil Original Suit No.88/97 is restored to its original number. Both the parties are directed to appear before the trial court on 5th Sept., 2005.

(Prakash Tatia), J.

c.p.goyal/-